IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 743

THE LINCOLN NATIONAL BANK OF WASHINGTON, ET AL., Executors of the Estate of Michael E. Buckley, *Petitioners,*

v.

KARL KINDLEBERGER, Administrator of the Estate of Julia C. Buckley, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

ARTHUR C. KEEFER,
F. GRANVILLE MUNSON,
Attorneys for Petitioners.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

Subject Index.

Table of Cases Cited.

Statutes Cited.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To The Honorable The Chief Justice And The Associate Justices Of The Supreme Court Of The United States:

Your petitioners, The Lincoln National Bank of Washington and Warren Craven, Executors of the Estate of Michael E. Buckley, respectfully submit their petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia reversing an order of the District Court of the United States

for the District of Columbia; the opinion of the Court of Appeals (R. 15-21); dissent (R. 21-24), reported in 155 F. 2d 281, 74 W. L. R. 666. The District judge did not write an opinion.

JURISDICTION.

The judgment of the United States Court of Appeals for the District of Columbia reversing an order of the District Court of the United States for the District of Columbia, was entered on April 29, 1946, (R. 25). On September 5, 1946, motion of appellee for a rehearing was denied (R. 26).

The jurisdiction of the Supreme Court of the United States is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 347), and this petition is filed under Rule 38 of the Revised Rules of this Court, as amended May 26, 1941.

STATUTES INVOLVED.

For the convenience of the Court, we here insert the pertinent statutes (D. C. Code, 1940):

> "30-213 (14:48). Insurance for benefit of wife, children, dependent relative, or creditor not liable for husband's debts.
>
> All policies of life insurance upon the life of any person maturing on or after January 1, 1902, and which have been or shall be taken out for the benefit of or bona fide assigned to the wife or children of or any relative dependent upon such person, or any creditor, shall be vested in such wife or children or other relative or creditor, free and clear from all claims of the creditors of such insured person. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, PP. 1162)"
>
> "30-214 (14:49). Insurance payable on death of wife to children, descendants, or her representatives.
>
> If the wife shall die before her husband, the amount of such insurance may be payable after her death to the children or descendants for their use, and to their

guardian if under age; and if there be no children or descendants of the wife living at the time of her death, to her legal representatives. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, PP. 1163)."

"35-716 (5:220). Rights of creditors and beneficiaries under policies of life insurance.

When a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of some person other than himself having an insurable interest therein, or except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof other than the insured or the person so effecting such insurance, or his executors or administrators, shall be entitled to its proceeds and avail against the creditors and representatives of the insured and of the person effecting such insurance whether or not the right to change the beneficiary is reserved or permitted, and whether or not the policy is made payable to the person whose life is insured, if the beneficiary or assignee shall predecease such person * * *. (June 19, 1934, 48 Stat. 1175, ch. 672, PP. 16, c. V.)"

QUESTIONS PRESENTED.

1. Where a policy of life insurance provides that the death benefits in case the beneficiary named therein dies before the insured be paid to the insured's own estate, does Title 35, Sec. 716 of the District of Columbia Code nullify such provision and compel payment to the estate of the predeceased beneficiary?

2. Did Congress intend when it enacted Title 35, Sec. 716 of the District of Columbia Code that such statute be exclusively a law regulating rights of creditors and beneficiaries under policies of life insurance, or did it also intend it to be a statute controlling the disposition of the proceeds of life insurance policies?

STATEMENT OF FACTS.

Petitioners are the executors of the estate of Michael E. Buckley who died on December 8, 1943. Respondent is the administrator of the estate of Julia C. Buckley, wife of said Michael E. Buckley, who died intestate on October 3, 1935, thus predeceasing her husband by more than eight years. New York Life Insurance Company, of New York, in December, 1924, insured Michael E. Buckley, by its policies numbered 8937646 and 8937647, for $10,000.00 and $5,000.00 respectively. These policies matured by his death in the amounts, respectively, of $11,370.20 and $5,685.11, which sums are now held by petitioners pending the determination of this action. Photostat copies of the policies, set forth in the record (R. 5-12), show that upon issuance, both policies provided that "upon receipt of due proof of the death of Michael E. Buckley, the insured", the company would pay the proceeds "to Julia C., wife of the insured", designated as the "Beneficiary", "with the right on the part of the insured to change the Beneficiary in the manner provided in Section 7". (R. 5, 9). Section 7 of each policy was entitled "Other Benefits and Provisions" (R. 7, 11), and the pertinent clause thereof read as follows:

> ."*Change of Beneficiary.—The Insured may at any time, and from time to time, change the beneficiary, provided this Policy is not then assigned.* Every change of beneficiary must be made by written notice to the Company at its Home Office accompanied by the Policy *for indorsement of the change thereon by the Company, and unless so indorsed the change shall not take effect.* After such indorsement the change shall relate back to and take effect as of the date of the Insured signed said written notice of change whether the Insured be living at the time of such indorsement or not, but without prejudice to the Company on account of any payment made by it before such indorsement. *In the event of the death of any beneficiary before the Insured the interest of such bene-*

ficiary shall vest in the Insured, unless otherwise provided herein.'' (Italics supplied).

Both the administrator of the wife's estate and petitioners as executors of the insured's estate claimed the proceeds of the policies on the death of the insured, and the former filed his complaint therefor in the District Court (R. 2-12 inc.). The District Court dismissed the complaint upon motion of these petitioners (R. 13). Upon appeal, the United States Court of Appeals for the District of Columbia by divided court reversed the judgment of the lower court and held that, in the absence of a change of beneficiary under authority reserved in the insured to make such a change, where the beneficiary predeceased the insured, the administrator of the beneficiary was entitled to the proceeds and avails as against the executor of the insured by virtue of Title 35, Sec. 716 of the District of Columbia Code. In reaching this conclusion the Court of Appeals also mentioned in its opinion Title 30, Secs. 213 and 214 of the District of Columbia Code.

SPECIFICATION OF ERRORS TO BE URGED.

The United States Court of Appeals for the District of Columbia erred:

1. In reversing the judgment of the United States District Court for the District of Columbia.

2. In holding that respondent herein is entitled to the proceeds of the two life insurance policies involved herein.

3. In construing Title 35, Sec. 716 of the District of Columbia Code as overriding the specific directions in the insurance policies that if the beneficiary (respondent's intestate) should die before the insured (petitioners' testator) the proceeds should be paid to the estate of the insured (petitioners).

4. In failing to affirm the judgment of the United States District Court for the District of Columbia.

REASONS FOR GRANTING WRIT OF CERTIORARI.

I. The United States Court of Appeals for the District of Columbia has decided a question of general importance in a manner that will have the following results, as stated by Prettyman, J., in the Court below (R. 24):

> "(1) will nullify the provision in innumerable contracts of insurance that if a named beneficiary predeceases the insured, the proceeds shall be payable to the estate of the insured,
>
> (2) will extend the protection of the statute to a class of persons (heirs, legal representatives, legatees and creditors of a beneficiary) wholly uncontemplated by the statute, and
>
> (3) will change the long-standing rule in this jurisdiction that where a beneficiary predeceases the insured, the proceeds belong to the estate of the insured."

II. The Court of Appeals chose the one of two possible constructions of an ambiguous statute which will cause great public inconvenience to policy holders, estates of decedents and life insurance companies without assigning any reason of public policy for so doing.

III. The construction adopted by the Court of Appeals interferes with the freedom of disposition of policy holders over the proceeds of their own life insurance policies.

IV. The statute of the District of Columbia thus construed is practically identical with statutes in twelve of the States of the Union and the decision below will necessarily serve as an important precedent in these jurisdictions. In the twelve other jurisdictions no court has adopted a like construction; in New York, from which the statute involved here was largely copied, the courts ignored in this type of case the statute and directed payment in accordance with the terms of the policy.

CONCLUSION.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari issue to the United States Court of Appeals for the District of Columbia commanding said Court to certify and send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record and all proceedings in said case and that said judgment of the United States Court of Appeals for the District of Columbia may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem just.

THE LINCOLN NATIONAL BANK OF WASHINGTON and WARREN CRAVEN, Executors of the Estate of Michael E. Buckley, deceased, *Petitioners,*

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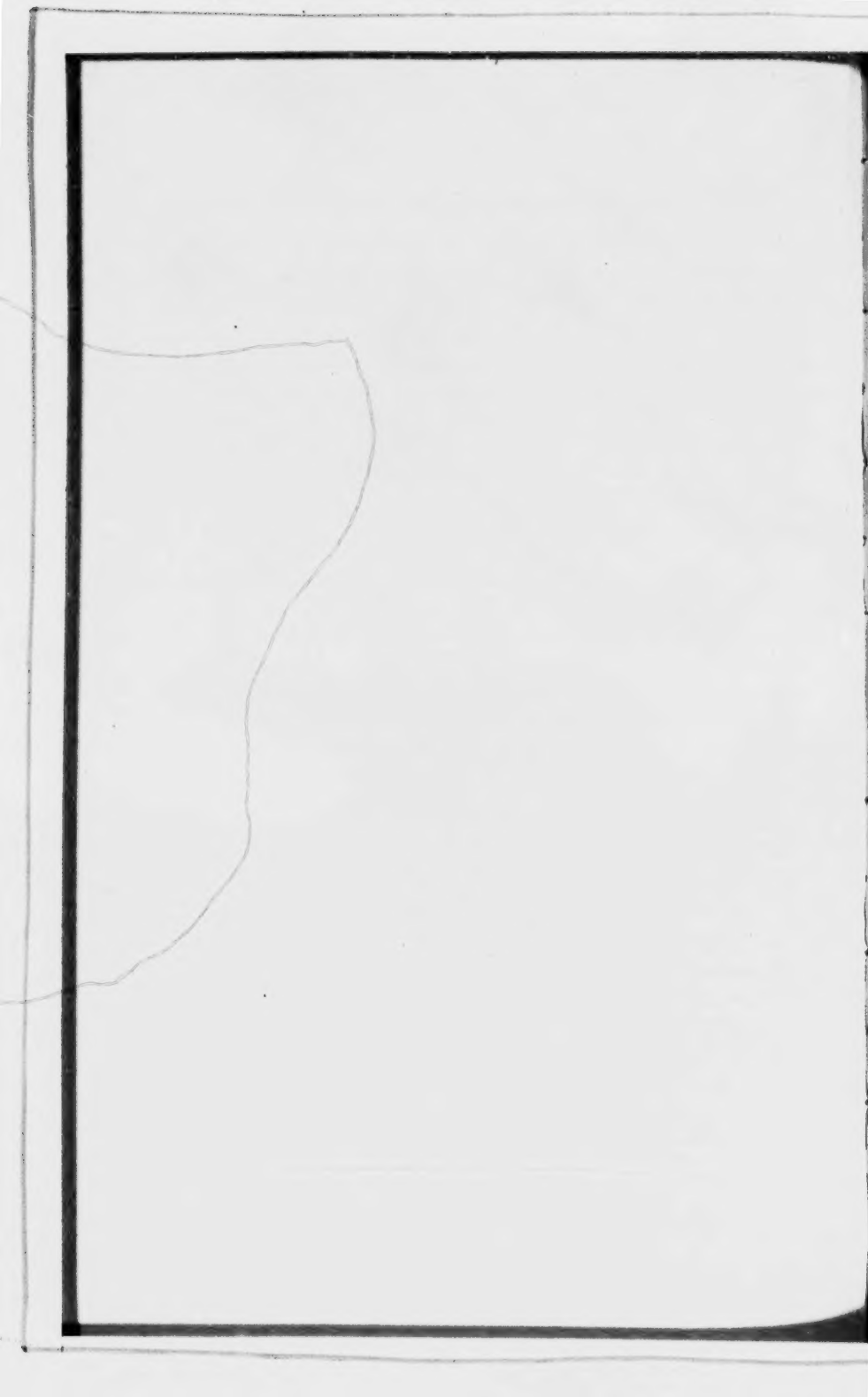

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KARL KINDLEBERGER, Administrator of the Estate of Julia C. Buckley, *Respondent.*

BRIEF IN SUPPORT OF PETITION.

THE STATUTE INVOLVED, ITS LEGISLATIVE HISTORY AND ITS TRUE CONSTRUCTION.

Title 35, Section 716 of the District of Columbia Code, which this Court is asked to pass upon, was, as the majority opinion below points out (p. 3, R. 17), "largely copied" from Section 55a of the insurance law of New York—adopted in 1927, now rewritten as Section 166 of the Insur-

ance Law of 1939.[1] When the Court of Appeals of New York first construed that statute, in 1929, that court said:

> "The Legislature was dealing primarily with the conflicting rights, on the one hand, of creditors, or personal representatives of a person, whose life is insured, and, on the other hand, of a beneficiary of the policy, to an insurance fund created by the appropriation of moneys of the insured for the payment of premiums."[2]

Thus to the New York Court, the statute was an exemption law, pure and simple, and not a statute regulating the distribution of insurance moneys. No later New York case has departed from this holding. Similarly, in other States having like statutes the ruling has been that the same were exemption statutes.[3]

Section 55a of the New York Insurance Law was, as Mr. Justice Prettyman pointed out in his dissenting opinion (p. 7, R. 21), "a composite embodying the most desirable features of the Massachusetts, Pennsylvania and Washington statutes.[4] Its sponsors represented it as an exemption statute designed for the protection of beneficiaries, primarily the family, from creditors of the insured; and one of the

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[1] The pertinent portion of Section 55a reads as follows: "If a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life, in favor of a person other than himself, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance, or his executors or administrators, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the same, whether the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee shall predecease such person; * * * "

[2] *Chatham Phoenix National Bank and Trust Company* v. *Crosney*, 251 N. Y. 189, 197, 167 N. E. 217, 219.

[3] *Bailey* v. *Wood*, 202 Mass. 562, 89 N. E. 149; *In re Lang* (Pa.), 20 Fed. (2d) 236.

[4] *Hirst, History of New York Life Insurance Law of 1927*, 4 Am. Bankr. Rev. 328 (1928).

draftsmen has said that the Referee's opinion in *In the Matter of Morris Messinger* admirably sets forth the meaning of the statute.[5] The Referee there said that 'The bulk of the statute undoubtedly follows that of Massachusetts,' and held it to be an exemption statute.'"[6]

In presenting the bill embodying this section, both the House and Senate Committees told the Congress that "The Courts have interpreted the section we have selected to exempt from bankruptcy proceedings the cash-surrender value of a policy.[7]

Eleven States, beginning in 1929, enacted statutes similar to those of Massachusetts, Pennsylvania, and New York[8], and yet no decision from any of these States treating the statute as a distribution law has been cited. The reason is not far to seek. What these States were seeking to accomplish was to grant complete exemption to policies subject to change of beneficiary by the insured, after the decision in this Court, in *Cohen* v. *Samuels*[9], holding that the trustee in bankruptcy of the insured might seize the cash value of policies which, while naming a beneficiary, reserved to the bankrupt insured the right to change the same. These States were clearly dealing with a question of exemption and not of distribution.

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[5] *In the Matter of Morris Messinger*, 29 Fed. (2d) 158 (C. C. A. 2d 1928); see also 4 Am. Bankr. Rev. 258 (1928), in which the statement of the draftsman (Mr. Hirst) appears at page 328.

[6] *In the Matter of Morris Messinger*, 29 Fed. (2d) 158; 4 Am. Bankr. Rev. 258, 265 (1928).

[7] H. R. Rep. No. 1526 and Senate Rep. No. 1420, both 73rd Cong. 2nd Sess. (1934).

[8] 1929: West Virginia, Maine, Colorado; 1931: Arkansas, New Hampshire, Rhode Island, Wisconsin, North Carolina, Delaware; 1932: Alabama; 1933, Georgia.

[9] 245 U. S. 50, 145.

DISCUSSION OF TITLE 30, SEC. 213 AND 214 OF THE DISTRICT OF COLUMBIA CODE.

The majority opinion refers to Title 30, Sections 213 and 214 of the District of Columbia Code (see pages 2 and 3) as strengthening its conclusion. But Maryland, for example, has precisely the same provisions[10] and the Maryland Courts take no such view. In *Pratt* v. *Hill,* 124 Md. 252, 92 Atl. 543, the wife had obtained an insurance policy on her husband's life, premiums thereon were paid by her, and she was named as beneficiary. She died leaving her husband and four children surviving her who continued to pay the premiums on the insurance policy and, upon the death of the husband, the proceeds of the policy were paid to the administrator of the husband. Claim therefor was made by the children who asserted a vested interest therein. The Court (at pp. 254, 255) said:

> "* * * there is nothing to show whether the policy contained any provisions as to who should have the proceeds of the policy in case of the death of the beneficiary, and if so, what they were, or whether there were any by-laws or other provisions controlling them."

And, after quoting Section 10 (corresponding to the Section 214 set forth on pages 2 and 3), it continued:

> "But notwithstanding that provision of the Code, the policy or by-laws may make other provisions, and in that case, of course, Section 10 would not apply. It would therefore be impossible for us to determine who is or are entitled to this fund from anything in the record, and we could not attempt to do so, even if the appeal is properly before us."

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[10] Sec. 9, Art. 45, Ann. Code of Md. (Flack) 1939, corresponding to Section 213 of Title 30, D. C. Code.

Section 10, Art. 45, Ann. Code of Md. (Flack) 1939, corresponding to Sec. 214 of Title 30, D. C. Code.

Again, in *Rosman* v. *Travelers Insurance Co.*, 127 Md. 689, 96 Atl. 875, the Maryland Court of Appeals said (at pp. 692, 693):

> "By the terms of the policy the insured reserved to himself the right to change the beneficiary without the consent of the beneficiary. By the overwhelming weight of authority it is held that where the rights of the beneficiary are dependent upon the will of the assured, the beneficiary acquires no vested right until the death of the insured. And this is assuredly founded upon reason; for by the contract between the insured and the insurer, any right of the beneficiary before death is a mere expectancy depending upon the will and acts of the insured. * * *
>
> "In 25 Cyc. 889, under Rights of Beneficiary, it is said: 'The beneficiary designated in an ordinary life insurance policy has a vested interest from the time the contract of insurance is made, in the absence of any stipulation for change of beneficiary by the insured.' "

Morgan v. *Penn Mutual Life Insurance Co.*, 94 Fed. (2d) 129, (1930), expresses the same view for the Federal Courts:

> "* * * where no right is reserved in the policy to change the beneficiary without his consent, the policy confers immediately upon its issue a vested right in the beneficiary that cannot be defeated by assignment or transfer without his consent, but it is equally well settled by controlling authority in the national courts that, where the policy by its terms gives the insured the right to change the beneficiary or assign the policy, the beneficiary takes only a contingent interest therein in the nature of an expectancy."

For further discussion of this principle, see *Andrews* v. *Andrews*, 97 F. (2d) 487; *Self et al.* v. *N. Y. Life Ins. Co.*, 56 F. (2d) 364; *Nance et al.* v. *Hilliard*, 101 F. (2d) 957.

GENESIS OF THE STATUTE.

It is unnecessary to refer at length to the opinions of this Court in *Cohen* v. *Samuels*, 245 U. S. 50, or *Cohn* v. *Malone*, 248 U. S. 450. Suffice it to say that under these decisions

the wife obtained no vested interest in an insurance policy where the insured reserved the absolute power to change the beneficiary, and that the cash surrender value of such a policy could be reached by the trustee of the insured in case of bankruptcy. We feel sure that in enacting Title 35, Sec. 716, the Congress intended to grant exemption to beneficiaries against the claims of the insured's creditors, and nothing else.

Finally, if it should be granted, for the sake of argument, that the phrase "or his executors or administrators" is so awkwardly placed in the section that the word "beneficiary" must be assumed to be its antecedent, and not the word "insured", this does not sustain the result reached by the majority, in view of the able and logical opinion of Mr. Justice Wylie, in *Washington Beneficiary Endowment Association* v. *Wood,* 4 Mackey 19 (1885). It was there held, in substance, that the designation in an insurance policy of a beneficiary "or her legal representatives" is not a gift to the legal representatives of the beneficiary, should she predecease the insured. Quoting from Roper on Legacies at p. 467, the Court referred to this language:

> " 'Since then a legacy to A, his executors and administrators, will, as we have seen, lapse by his death before the testator, so will a legacy given to A and his *personal representatives;* for in each case the additional words are unnecessary and merely express what the law would have directed if the testator had been silent on the subject, viz., that if A survive the testator (an event which the gift implies since no testator could be supposed to mean to give to any but those persons who shall survive him), and afterwards die before the legacy becomes payable, his personal representative shall receive it. Hence, it appears that the mere naming of the executors, administrators, or personal representatives of A is not inconsistent with the rule before mentioned respecting the lapse of legacies, and does not unequivocally show the testator's intention to substitute those persons in the place of A in the event of A's death before him.' "

CONCLUSION.

It is respectfully submitted that the question involved being one of first impression, of great importance to insurance companies and the insured public generally, and in view of the opposing opinions expressed by the judges who have passed on this question, the public interest requires that the writ of certiorari be granted and the meaning of the statute involved definitely determined by this Honorable Court.

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INDEX.

Table of Cases.

Statutes.

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v.

KARL KINDLEBERGER, Administrator of the Estate of JULIA C. BUCKLEY, *Respondent.*

BRIEF FOR RESPONDENT IN OPPOSITION TO THE ISSUANCE OF A WRIT OF CERTIORARI.

Respondent opposes the issuance of a writ of certiorari on two grounds:

FIRST. This court will not reexamine a judgment of the United States Court of Appeals for the District of Columbia on matters of local law relating to the District of Columbia.

SECOND. The judgment of the United States Court of Appeals for the District of Columbia is plainly right that under the local statutes, to which all policies of insurance

are subject, the administrator of the wife, the named beneficiary in the life insurance policy, is "entitled to its proceeds and avails against the representatives and creditors of the insured".

1. This Court Will Not Reexamine the Judgment of the United States Court of Appeals in This Case.

The Act of March 3, 1901, D. C. Code 1940, Title 30 Sections 213 and 214 (R. 17) applies only to the District of Columbia, and creates a vested interest in the wife in all policies of insurance with the provision that in case of her death her children, or if there are no children, her legal representatives shall be entitled to the proceeds.

The Act of June 19, 1934, D. C. Code 1940, Title 35, Section 716 (R. 16), the construction of which by the court below is challenged, has no force and effect outside of the District of Columbia. Neither of these statutes has any general application, and the issuance of a wirt of certiorari would seem to be governed by the decisions of this court, that its jurisdiction to reexamine final judgments or decrees of the United States Court of Appeals for the District of Columbia, in which the construction of a statute is drawn in question, does not extend to cases where the Act of Congress construed by that court is purely local law relating to the District of Columbia, but that jurisdiction extends only to those having a general application throughout the United States.[1]

In *Busby* v. *Electric Utility Employees' Union*[2], Busby sued an unincorporated union with a principal office in the District of Columbia, with service of process upon the president of the union. The Court of Appeals certified to this court the question of whether or not such a union was suable in an action of debt brought against it here.

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[1] *American Security & Trust Co.* v. *District Commissioners of D. C.*, 224 U. S. 491, 56 L. Ed. 856. *United Surety Co.* v. *American Fruit Products Co.*, 238 U. S. 140, 59 L. Ed. 1238.

[2] 323 U. S. 72, 89 L. Ed. 78.

The Supreme Court dismissed the certificate, saying (p. 80):

> "Only in exceptional cases will this Court review a determination of such a question by the Court of Appeals for the District."

This court has refused to review the decision of the Court of Appeals as to which of the inconsistent provisions of the local statutes should govern[3].

While the court reviewed a decision under the Longshoreman's Act, having a general application but made applicable to the District of Columbia, in doing so, reiterated:

> "We will not ordinarily review decisions of the United States Court of Appeals which are based upon statutes so limited or which declare the common law of the District."[4]

The petitioner attempts to bring this case within the provisions of Rule 38(c) by contending that the United States Court of Appeals for the District of Columbia has decided a question of general importance, which has not been but should be settled by this court. We submit that this provision was not intended to enlarge the right or discretion of this court to reexamine the final judgment of the United States Court of Appeals as to the construction of a local statute.

To support this contention, it is asserted in the brief for the petitioner that a statute similar to the Act of June 19, 1934 exists in eleven states of the union. No assertion is made that in any of these states which have a statute similar to the Act of June 19, 1934 is there a statute comparable to the Act of March 3, 1901, vesting in her all policies of life insurance to be taken out for the benefit of the wife. It is nowhere asserted that this question has arisen in any of the states named in the petitioner's brief, or been de-

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[3] *D. C.* v. *Pace*, 320 U. S. 698.

[4] *Del Vecchio* v. *Bowers*, 296 U. S. 280, 80 L. Ed. 229.

cided by those states contrary to the decision of the Court of Appeals here.

But, aside from this, it is hardly to be contended that if Massachusetts or New York had construed its statute, either as the majority opinion or the minority opinion below construed this statute, the operation of the statute being limited to the state, this court either could or would grant a writ of certiorari to test the correctness of the decision of the highest court of either of those states on a question of the substantive law of the state.

In the language of Mr. Justice Frankfurter, concurring in the *Busby* case, supra:

> "If a suit like this were brought in the District Court for the Southern District of New York under diversity jurisdiction, no conceivable question other than that of the procedural or substantive law of the State of New York could arise. No federal question is infused into the litigation because such a local suit was brought in the District of Columbia." (p. 77)

No federal question is involved in this case. It is a question merely of the substantive law of the District of Columbia and does not raise any issue of the federal law. The decision of the highest court of the District of Columbia is entitled in such case to the same dignity and conclusiveness as the judgment of the courts of last resort in the several states.

2. The Judgment of the United States Court of Appeals is Plainly Right.

The authorities heretofore cited herein would seem to preclude the reexamination of the judgment below. If, however, the court should consider the terms of the statutes, a writ of certiorari should be denied, because the judgment below is plainly right. The court below held that in a conflict between the provisions of insurance contracts and those of the statute, ordinarily the statute controls[5]

[5] *New York Life Insurance Co.* v. *Cravens*, 178 U. S. 389.

"and it expressly undertakes to do so in this case". (R. 20) It further held:

> "that the effect of the statute is to give the proceeds of a policy such as it describes to the personal representatives of the beneficiary or assignee if the beneficiary or assignee does not survive the insured. This is limited, of course, to situations in which the insured did not exercise, after the death of the beneficiary, the right to designate another." (R. 19)

The view contended for by the petitioner in the analysis of the statute is stated in the dissenting opinion as follows: (R. 24)

> "Specifically, it is my view that the word 'his' in the phrase 'or his executors or administrators' refers to the insured and not to the beneficiary. The expression 'lawful beneficiary, other than the insured, his executors or administrators' seems to be a common one in the insurance field."

The contrary view is expressed in the opinion of the court as follows: (R. 16)

> "We have no doubt that the word 'beneficiary' is the antecedent of the word 'his' in the statutory phrase 'or his executors or administrators'; and that the meaning, therefore, is that the lawful beneficiary, or his executors or administrators, shall be entitled to the proceeds against the creditors and representatives of the insured."

If the majority opinion below is not correct and the phrase "his executors and administrators" does not mean the beneficiary's executors or administrators, the provision has no meaning and the phrase no field of operation, for after the death of the insured a named beneficiary in the policy or assignee, if living, is entitled to its proceeds against the creditors and representatives of the insured without any statutory declaration to this effect. Clearly too, there are no "proceeds" of the policy until the death of the insured,

and no "representative" of the insured until his death. It therefore needed no legislation to insure the right of a living beneficiary named in a policy or an assignee to its proceeds after the death of the insured against the claims of creditors and the representatives of the insured.

It is contended for the petitioner that this statute was enacted to meet *Cohen* v. *Samuels*, 245 U. S. 50, holding that the trustee in bankruptcy was entitled to the cash value of policies where the right to change the beneficiary was reserved. If Congress desired to limit this statute to protecting the cash surrender value of the policy, it would have used appropriate terms and would not have used the term "proceeds", which in ordinary parlance means the value of the policy maturing by the death of the insured.

Further analysis of the statute fully confirms the construction given to it by the court below. One of the lawful beneficiaries within the purview of the statute is a bona fide assignee of the policy, and whether the statute be considered one of "exemption" or "distribution", it was designed to protect the interests of a lawful beneficiary including a bona fide assignee in the proceeds of the policy. Certainly the living bona fide assignee of a policy needed no legislation to protect his interest from the bankrupt court or elsewhere. Even a change of beneficiary did not disturb his assignment, and the statute is careful to protect his rights.

The plain object of the statute is to protect the estate of the beneficiary or assignee predeceasing the insured "against the creditors and representatives of the insured", where "the right to change the beneficiary" is reserved but not exercised, and where the policy is made payable to the insured "if the beneficiary or assignee shall predecease" the insured.

Any other construction leaves the "proceeds" of a policy designed to protect the wife and children to the mercy of the creditors and defeats the object of the statute and, as before said, leaves no field of operation in the statute for the phrase "his executors or administrators".

The wife's right and the right of her executors and administrators to the proceeds of this policy,

> "did not rest upon contract but legislative grant by way of exemption from the claims of creditors of an insurance fund created by the husband's annual appropriation or investment of his monies"[6]

The statute gave her a vested right and not one contingent upon her surviving her husband.

The *ad hominem* argument that such a construction would cause great public inconvenience to policyholders and life insurance companies seem to have little weight. As pointed out by the court below, this statute does not prevent either an assignment of the policy or a change of beneficiary, and the decedent in this case had several years after his wife's death within which to change the beneficiary if he had so desired.

So far as the inconvenience to life insurance companies is concerned, it is as easy to pay the proceeds of a policy to the executors or administrators of a beneficiary as to the executors or administrators of the insured, and if in the sporadic cases in the District of Columbia, if any, the insurance companies have disregarded the vested interest of the wife in such policies, as plainly declared by the statute, the insurance companies are alone responsible.

CONCLUSION.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

LESLIE C. GARNETT,
SAMUEL F. BEACH,
331 Tower Bldg.,
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[6] *Kittell* v. *Domeyer*, 175 N. Y. 205, 67 N. E. 433.

Supreme Court of the United States

October Term, 1946

No, 743

THE LINCOLN NATIONAL BANK OF WASHINGTON, et al., Executors of the Estate of Michael E. Buckley,

Petitioners,

vs.

KARL KINDLEBERGER, Administrator of the Estate of Julia C. Buckley,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE, AND BRIEF AMICUS CURIAE

LAWRENCE A. BAKER,
Attorney for Amicus Curiae,
730 Fifteenth Street,
Washington 5, D. C.

INDEX

CASES CITED

STATUTES CITED

MISCELLANEOUS

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Come now the Life Insurance Association of America and National Association of Life Underwriters, both having their principal office in the City and State of New York, and by their attorney, Lawrence A. Baker, request that this Court grant them leave to file the annexed brief Amicus Curiae in support of the petition for certiorari heretofore filed in this cause. Consent has been obtained

from petitioners but respondent has refused to consent that the brief be filed.

LAWRENCE A. BAKER,
Attorney for Amicus Curiae,
730 Fifteenth Street,
Washington 5, D. C.

Receipt is acknowledged of a copy of the foregoing motion, together with a copy of the brief Amicus Curiae attached hereto.

ARTHUR C. KEEFER and
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BRIEF OF AMICUS CURIAE

Statement as to Amicus Curiae

Life Insurance Association of America is an organization composed of ninety United States and Canadian legal reserve life insurance companies, a substantial number of which have issued policies on the lives of the residents of the District of Columbia. Its member companies carry over 85% of the insurance in force in the United States and Canada other than insurance in force with the Veterans Administration; they do business in all the States and the District of Columbia. This organization, formed in 1906, and formerly known as The Association of Life Insurance Presidents, is actively interested in all matters concerning the welfare of life insurance policyholders and their beneficiaries.

National Association of Life Underwriters, formed in 1890, is an organization of more than forty-eight thousand men and women engaged in the sale and service of life insur-

ance in the forty-eight States and the District of Columbia. Over three hundred of these members are engaged in the service of life insurance in the District of Columbia.

These two organizations seek to intervene herein because they consider the judgment by the divided United States Court of Appeals for the District of Columbia to be of great concern to many policyholders throughout the country. The judgment below construed a section of the District of Columbia Code which in effect is a standard and uniform statute now in force in thirteen jurisdictions in the United States and which, from its first enactment in New York in 1927 until this time, has been considered and construed exclusively as a statute relating to creditors' rights to the proceeds and avails of life insurance policies. The Court declared that in view of this statute a certain clause in a life insurance policy has no force and effect. That clause provides in substance that if the beneficiary should die before the insured, the death benefits should be paid to the insured's own estate. The importance of this holding is obvious when one considers that practically all life insurance policies contain such a clause.

Opinions Below

The opinions of the United States Court of Appeals for the District of Columbia have been reported in 155 F. (2d) 281, 74 Washington Law Reporter 666.

The District Court of the United States for the District of Columbia did not write any opinion.

Jurisdiction

The jurisdiction of this Court is set forth in the Petition, page 2 thereof.

Questions Presented

The questions presented are set forth in the Petition at page 3.

The Statute Involved

The statute involved was enacted by Congress on June 19, 1934. It reads:

> "35-716 (5:220o). Rights of creditors and beneficiaries under policies of life insurance.
>
> "When a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of some person other than himself having an insurable interest therein, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof other than the insured or the person so effecting such insurance, or his executors or administrators, shall be entitled to its proceeds and avail against the creditors and representatives of the insured and of the person effecting such insurance whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured, if the beneficiary or assignee shall predecease such person * * *. (June 19, 1934, 48 Stat. 1175, ch. 672, § 16, ch. V.)"

We shall refer to this section, for sake of simplicity, as § 35-716.

Specification of Errors

These specifications will be found in the Petition at page 5.

Facts and Judgments Below

Petitioners seek a writ of certiorari to review a judgment of the United States Court of Appeals for the District of Columbia (R. 25) which reversed, one Justice dissenting, an order of the District Court of the United States for the District of Columbia. The judgment is dated April 29, 1946. An order denying appellees' petition for a rehearing was made September 5, 1946 (R. 26).

The order of the District Court dismissed the action and the complaint because the complaint "fails to state a claim against the defendant upon which relief can be granted" (R. 13).

Because of the nature of the motion, the only papers before the Courts were the complaint and two exhibits annexed thereto, the latter being photostats of two policies of life insurance.

The complaint (R. 2-4) avers that plaintiff is the Administrator of the Estate of Julia C. Buckley, deceased, and that defendants are the Executors of Michael E. Buckley, deceased; the death of Michael on December 8, 1943, and the death of Julia eight years before on October 3, 1935; the issuance of two life insurance policies by New York Life Insurance Company of New York on December 13, 1924 in the amounts respectively of $10,000 and $5,000 on the life of Michael, in each of which

> "Julia C. Buckley, was named as beneficiary, with the right reserved in each of said policies to change the beneficiary, with a provision in each that 'in event of the death of the beneficiary before the insured, the interest of such beneficiary shall vest in the insured'." (R. 3)*

* The complaint omits all reference to the relationship between Michael and Julia Buckley; the exhibits indicate that they were husband and wife.

The phrase quoted by the pleader will be found in the exhibits respectively at R. 7 and 11. The phrase is part of the printed policy form issued by the insurer.

The complaint goes on to allege payment of the proceeds of the policies in the amounts of $11,370.20 and $5,685.11 respectively by the insurance company to defendants and that these proceeds are held by them to await the determination of this action. Paragraph 7 of the complaint avers:

> "7. The plaintiff avers that *although* the insured, Michael E. Buckley, reserved the right in said policies to change the beneficiary and *each policy contained the provision above set out that 'in event of the death of any beneficiary before the insurance, the interest of such beneficiary shall vest in the insured',*† * * * nevertheless Julia C. Buckley had a vested interest in each of said policies and the proceeds of both of said policies are assets of the estate of the beneficiary, Julia C. Buckley, under the following provisions of Title 35, Section 716 of the D. C. Code of 1940: * * *." ‡
>
> (Here follows a verbatim quotation of § 35-716 in the language set forth by us at page 5.)

Thus it will be noted that the complaint concedes that under the language of the two policy contracts involved herein, plaintiff is not entitled to recovery; it thus tenders no issues of fact, merely an issue of law—does § 35-716 supersede the policy provisions? While the contracts, according to the complaint's averment, provide that in the event of the death of the beneficiary before the insured, the latter, that is, his estate, is entitled to the proceeds, the complaint claims that these provisions are in conflict with § 35-716 and therefore must yield to it.

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† Emphasis throughout this brief supplied by us, unless otherwise stated.

‡ We have omitted in our synopsis of the complaint reference to the question whether one of the policies was assigned or its beneficiary was changed, as this question does not seem pertinent to the matters before this Court at this time.

The District Court of the United States for the District of Columbia, by dismissing the action and the complaint (R. 13) for failure to state a claim against the defendant upon which relief can be granted, decided that the statute and policy provisions are not in conflict.

The majority opinion of the United States Court of Appeals, however, in reversing, held with plaintiff (R. 19-20), saying:

> "It follows that the provisions of the insurance contracts and the provisions of the statute *are in conflict.* Under such circumstances, ordinarily *the statute controls.* * * * That the contractual terms must yield to the statute in this case is, therefore, clear, * * *."

It also said that the insured

> "had he desired that the statute not control the disposition of his policies, (he) could have exercised the right reserved by him to change the beneficiary. He did not do so" (R. 20)

It should be noted that the majority and minority Justices of the United States Circuit Court of Appeals were in agreement that one of the objects of § 35-716 is to grant exemption from creditors' claims. The majority said of the section that it, in conjunction with two other sections of the Code, manifests "a quite deliberate and careful intention on the part of the Congress to exempt the proceeds of insurance from the claims of the creditors of an insured * * * " (R. 19). Majority and minority differ only as to whether the statute also controls "the disposition of the proceeds of policies" (R. 20).

POINT I

The decision below is of importance to policyholders residing in twelve states as well as to those residing in the District of Columbia.

The two nation-wide associations submitting this brief are, needless to say, financially disinterested in the outcome of this litigation. Their interest in the case is based on a conviction of its importance far beyond the individual concerns of the parties litigant. They are aware, of course, of the restrictions which this Court wisely imposes on itself so as to conserve its time and attention for a limited number of cases of outstanding significance. Were it not for their conviction that the case, as it comes to this Court from the United States Court of Appeals for the District of Columbia, is likely to affect ever-widening circles throughout the nation, they would refuse to lend their support to petitioners' application.

A

The contract clause which the United States Court of Appeals for the District of Columbia nullified is in universal use.

May we first of all quote verbatim the clause, identical in the two policy contracts, which the judgment of the learned United States Court of Appeals for the District of Columbia has "nullified" (R. 24):

> "In the event of the death of any beneficiary before the insured, the interest of such beneficiary shall vest in the insured unless otherwise provided herein" (R. 7, 11).

The policies in suit herein did not "otherwise provide". The parties and all the Justices of the Courts below agree that the clause means, in simple, every-day language, that if the beneficiary named in the policy should die before the insured, as happened in the case at bar, the death benefits

of the policies shall be paid to the estate of the insured, represented herein by petitioners.

Although these policies were issued by New York Life Insurance Company in 1924, the clause is by no means unique with that company nor did its use cease at that time.

On the contrary, a corresponding clause, expressed in a great variety of language, but its simple meaning unmistakable, is printed to this day into the policy forms of practically all life insurance companies doing business in this country. That that is so can be verified by reference to "The Spectator Handy Guide, 1946, 55th Edition", a standard reference book,* in which are published verbatim the policy forms of one hundred five life insurance companies called by the publisher in the preface "the leading life insurance companies." (The names are listed in full in the Appendix herein.)

Now, according to this publication, at the present time one hundred two out of the one hundred five legal reserve life insurance companies listed therein include in their printed policy forms a clause having the same effect as the one under discussion, that is, a clause under which, if the beneficiary should die before the insured, the death benefits are paid to the insured's own estate.

As compiled from "The Spectator Insurance Year Book, 1946, Life Insurance Volume",* the insurance in force carried by ninety-nine of the one hundred two companies (three Canadian companies being eliminated) is $93,106,585,788.

Fifty-six of the one hundred two companies do business in the District of Columbia. The total amount of insurance carried by them in the District of Columbia, as compiled from "The Spectator Insurance Year Book, 1946, Life Insurance Volume",* is $1,323,845,000.

Included in these one hundred two companies are two companies domiciled in the District of Columbia.

Available published records do not indicate how often this clause, printed in the policy forms of these one hun-

* Published by The Spectator, Philadelphia, Pa.

dred two companies, is modified by special agreement, nor how often the three companies which omit the clause from their printed policy forms insert a provision to the same effect into their policies before issuance thereof. But we submit that from the facts just stated, the inference is unavoidable that the greatest part of all life insurance policies now outstanding in this country provides for payment of the death benefits to the estate of the insured should the beneficiary named therein die before him.

Nor is the reason for such inclusion far to seek. The clause deals, of course, with a matter which is of no financial concern to the insurance companies. Whether the death benefits are paid to the beneficiary's estate or to the insured's own estate does not affect them. The insertion of a provision which selects, the beneficiary being dead, the insured's own estate as payee is eminently practical. If the moneys must go to the estate of a predeceased beneficiary, estates long closed must be reopened or administrations instituted in estates that never called for such attention. The instant case illustrates the point. Julia C. Buckley died, according to paragraph 4 of the complaint, on October 3, *1935*. Plaintiff, administrator of her estate, was "on the 12th day of June, *1944*, appointed and duly qualified as Administrator" of her estate (par. 1, R. 2). The lapse of almost nine years between death and appointment indicates that administration of Julia's estate would not have been necessary had it not been for the present claim.

Furthermore, it would seem to us that a provision that if the beneficiary named in the policy is not living, the death benefits should go to the insured's own estate rather than to that of the beneficiary, is what most policyholders would want. Needless to say, those contrary minded may "otherwise provide" (R. 7, 11).

This Court will take cognizance of the fact, we trust, that the one hundred two "leading" life insurance companies that include the clause in their printed policy forms maintain legal departments; the Court will assume with us,

we feel sure, that these legal departments, or at least a good many of them, must have known of the enactment of § 35-716 of the District of Columbia Code because, as stated in the minority opinion, the section was presented as prepared by the Chairman of the Committee on Insurance Law of the American Bar Association and "as being from the standard code provisions of the Association of Life Insurance Presidents* and the American Life Convention" (R. 22) and the leading life insurance companies are members of one or both of these two associations. Under such circumstances, the persistence of these life insurance companies in printing the clause into their policy contracts can be explained only by the fact that they took it for granted that there was no conflict whatever between the clause and the statute and its counterparts in the various States. That is all the more so because, as pointed out before, it makes no difference whatever, financially, to the life insurance companies whether they pay death benefits to one estate or the other.

B

The statute is in force in thirteen jurisdictions.

The statute in force in the District of Columbia, § 35-716, was, so the Court said (R. 17), "largely copied" from § 55a of the Insurance Law of New York. The New York statute was enacted in 1927.

Between 1927 and 1934, when Congress enacted § 35-716, statutes identical, for all practical purposes, with the two, were adopted as follows:

West Virginia	1929	Wisconsin	1931
Maine	1929	North Carolina	1931
Colorado	1929	Delaware	1931
Arkansas	1931	Alabama	1932
New Hampshire	1931	Georgia	1933
Rhode Island	1931		

No Court in any of these other jurisdictions, having statutes similar to § 35-716 of the District of Columbia

* Now Life Insurance Association of America.

Code, has ever held that the statute "nullifies" a clause in a life insurance policy which directs payment of the death benefits to the insured's own estate, should the beneficiary die before him. Says the United States Court of Appeals for the District of Columbia (R. 16):

> "There is a dearth of authority for the reason that the question is one of first impression in this jurisdiction and does not seem to have arisen elsewhere, as far as we have ascertained, under an identical statute."

Thus, without binding or even persuasive precedent, the Court has held in 1946 that a statute in force in the District of Columbia since 1934 and in other jurisdictions for even longer periods, has deprived residents of the District, and most likely residents of twelve other jurisdictions, of the right to reserve a reversion to themselves when they name a beneficiary of their life insurance policies.*

The effect of that holding on residents of the District of Columbia is obvious; the effect on policyholders in the twelve other States having statutes practically identical with § 35-716 of the District of Columbia Code, should the judgment of the United States Court of Appeals for the District of Columbia remain unreviewed and unreversed, would be almost as bad. Needless to say, the judgment of such an important Court will be considered by bench and bar as a precedent of high order; neither the insuring public nor its beneficiaries nor life insurance companies will know the exact status of the matter until the respective Courts of last resort of the twelve States have spoken.

Unnecessary and expensive litigation may be expected, delay of settlement of death claims because of the necessity of interpleader actions may be predicted—all of which evils could be eliminated should this Court see fit to grant a writ herein and review the lower Court's judgment.

---

* We shall discuss under a subsequent heading the methods by which, under the decision of the United States Court of Appeals for the District of Columbia, a person may still recapture the proceeds for his own estate.

POINT II

The lower Court's construction of the statute will cause great public inconvenience. Courts should avoid such a construction.

The Court said at R. 20:

> "Buckley survived until 1943, some nine years after the statute was adopted. He is presumed to have known of its contents, and, had he desired that the statute not control the disposition of the proceeds of his policies, he could have exercised the right reserved by him to change the beneficiary. He did not do so. All the insured has to do in this jurisdiction, if the statutory rule for disposition of the policy's proceeds does not suit him, is to designate another beneficiary when death removes the first one named."

In other words, a policyholder in the District of Columbia, once having named a beneficiary thereof,

(a) at his peril must have knowledge of the death of the beneficiary; as § 35-716 is applicable to each and every beneficiary named in a life insurance policy, be the same related to the insured by blood or marriage or totally unrelated, be the same living in the District or elsewhere, we may readily assume cases where the insured has no knowledge of the death of the beneficiary.

(b) The insured must know that the clause printed into his policy contract which provides that in case of death of the beneficiary, the death benefits shall be paid to the insured's own estate, is void and of no effect.

(c) He must decide to act; whether a mere change of beneficiary, naming, in lieu of the deceased party, the insured's own estate or his executors, administrators or assigns, would be sufficient to take the policy out of the control of the statute, has not yet been decided and anyone

reading the learned lower Court's opinion would conclude that such a change would be of no effect; it seems as if the only change which the Court permitted is one naming a third person.

But suppose a policy contract under which the insured has not reserved the right to change the beneficiary but has reserved to himself a reversion by providing that all the rights under the contract, including that to death benefits, shall revert to him, should the beneficiary predecease him? Such contracts are quite common.

Policyholders under this type of contract cannot avail themselves at all of the method indicated by the Court below; they may, as the Court imputed to Mr. Buckley (R. 20), desire "that the statute not control the disposition of the proceeds of" their policies but they cannot exercise the right to change the beneficiary because they have not reserved any such right.

In other words, in such contracts, under the decision of the Court below, even though they contain a reversion to the policyholder, should the beneficiary die before them, the right of the beneficiary's estate, given to it by the Court below under its construction of § 35-716, cannot be destroyed.

In the case at bar it would seem from the allegation of paragraph 4 of the complaint (R. 2) that the parties interested in the beneficiary's estate are children of the beneficiary and the insured; but that need not always be the case. The benficiary may, under § 35-716, be altogether unrelated to the insured [in *Mitchell* v. *Mitchell,* 177 Misc. 1050, 32 N. Y. S. (2d) 839, rev. 265 A. D. 27, 37 N. Y. S. (2d) 612, aff'd 290 N. Y. 779, 50 N. E. (2d) 106, for instance, the beneficiary of one life insurance policy involved was the insured's faithful secretary]. In other cases a beneficiary maintaining some blood or marriage relationship to the insured may have died testate, bequeathing all her property to strangers. That strangers should have a financial interest in a man's death may lead to serious complications.

Whether we consider the effect of the construction given to the statute, § 35-716 of the District of Columbia Code, as applicable only to the District or as necessarily extended to the other jurisdictions having similar statutes, we find that the invalidation of the clause in the contracts by which the insured reserves a reversion to his own estate, will cause great public inconvenience. As was said by a well known text writer:

> "The fact that public inconvenience will result from a proposed construction of a statute is a circumstance which indicates that such construction is against the legislative intent. It is an old maxim that, 'An argument drawn from inconvenience is forcible in law.' Where a particular application of a statute in accordance with its apparent intention will occasion great inconvenience, another and more reasonable interpretation is to be sought." (1 McKinney's Consolidated Laws of New York Annotated, § 142, citing numerous decisions by the Court of Appeals of New York.)

See to the same effect: *Knowlton* v. *Moore,* 178 U. S. 41, 77, 44 L. Ed. 969, 984; *Commercial Credit Co.* v. *Tait,* District Court of Maryland, December, 1924, 2 F. (2d) 862, 865; *United States of America* v. *Powers,* 307 U. S. 214, 217, 83 L. Ed. 1245, 1249; *Bird* v. *U. S.,* 187 U. S. 118, 124, 47 L. Ed. 100, 103.

POINT III

The clause nullified by the Court below presents no public evil calling for correction by action of the legislator.

In enacting § 35-716, why should Congress have intended to bar or "nullify" a clause in a life insurance policy providing that if the beneficiary named in the policy should die before the insured the death benefits should be payable to the insured's own estate? Why should Congress have intended

to deprive policyholders in the District of Columbia of the right to dispose, in such a case, of the policy's death benefits by their last will and testament, or by the laws regulating intestacy? Why should Congress think that it is in the public interest to divert, in such a case, the death benefits from the insured's own estate to that of a beneficiary who may have died decades before? The opinion of the learned United States Court of Appeals for the District of Columbia does not answer these questions.

Yet to search for the legislative intent is a prime requisite of proper statutory construction. See, for instance:

> *Takao Ozawa* v. *U. S.*, 260 U. S. 178, 67 L. Ed. 199.
> *Burton* v. *U. S.*, 202 U. S. 344, 50 L. Ed. 1057.
> *Robertson* v. *U. S. ex rel. Baff*, 285 F. 911, 52 App. D. C. 190.

All the four Judges of the two Courts below, as well as bench and bar in the twelve other jurisdictions, are agreed that Congress, when it enacted § 35-716 of the District of Columbia Code, intended to grant to the proceeds and avails of life insurance policies certain exemptions from creditors' claims. But when the majority of the United States Court of Appeals for the District of Columbia decided to ascribe to Congress the additional intent to "control the disposition of the proceeds of (his) policies" (R. 20), an intent never ascribed before to any legislature enacting such statutes as § 35-716, it should have pointed out the evil which Congress intended to correct, the reasons which impelled it to deprive policyholders in the District of Columbia of their freedom of disposition.

We cannot conceive of any evil created by the operation of the clause contained in the two policies in the case at bar, as written—as a matter of fact, we believe that the public interest is being served by the clause; we submit that no reasons of public policy could have possibly impelled Congress to enact a statute controlling the disposition of

the proceeds of policies; that being so, the Court below should have adopted the construction of § 35-716 which was adopted by the United States District Court for the District of Columbia and by the minority of the United States Court of Appeals for the District of Columbia. We also submit that this disregard of reasons of public policy urgently calls for a review by this Court.

POINT IV

The decision of the United States Court of Appeals for the District of Columbia herein is erroneous.

This brief being primarily in support of the petition for a writ of certiorari, a discussion of the merits of the case may, we trust, largely be omitted herein. The merits are discussed with great acumen by Prettyman, J., in the dissenting opinion (R. 21-24).

The reasoning of the majority of the United States Court of Appeals for the District of Columbia, succinctly stated, is:

The Court (R. 16) quotes what it calls "the pertinent sentence of the statute", § 35-716, having omitted "certain irrelevant phrases":

> "When a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of some person other than himself * * * the lawful beneficiary * * * other than the insured or the person so effecting such insurance, *or his executors or administrators,* shall be entitled to its proceeds and avail(s) against the creditors and representatives of the insured * * *." (Court's omissions and emphasis.)

Now, the Court below decided that the phrase "or his executors or administrators", emphasized by it, refers not to "the insured or the person so effecting such insurance" but to the beneficiary.

It is our opinion that the phrase should properly be allocated to "the insured or the person so effecting such insurance".

Furthermore, we believe that even if allocated to the beneficiary, the rule of *Endowment Association* v. *Wood*, 4 Mackay 19 (1885), should be followed. It was held in that case that a similar phrase does not vest the proceeds in the beneficiary but merely has the effect of directing payment to the estate of the beneficiary, should the beneficiary survive the insured but die before actually receiving the death benefits.

It seems clear to us, and if this Court should see fit to grant a writ we feel sure that we can produce ample and convincing argument and authority for the statement, that § 35-716 was intended by the Congress as a statute exempting proceeds and avails of life insurance policies from claims of creditors but that it was not intended by Congress to at all "control the disposition of the proceeds" of life insurance policies.

POINT V

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LAWRENCE A. BAKER,
Attorney for Amicus Curiae.

ALBERT HIRST, of the New York bar,
HENRY R. GLENN, of the New York bar,
on the Brief.

APPENDIX

The following one hundred two life insurance companies print into their policy forms a clause similar to the one "nullified" by the Court below:

Acacia Mutual Life Insurance Co.
Aetna Life Insurance Co.
All States Life Insurance Co.
American Mutual Life Ins. Co.
American National Life Ins. Co.
American United Life Ins. Co.
Amicable Life Insurance Co.
Atlantic Life Insurance Co.
Bankers Life Co. (Iowa)
Bankers Life Ins. Co. (Nebraska)
Bankers Mutual Life Co.
Bankers National Life Ins. Co.
Berkshire Life Ins. Co.
Boston Mutual Life Ins. Co.
Business Men's Assur. Co. of Am.
California-Western States Life Ins. Co.
Canada Life Assurance Co.
Capitol Life Insurance Co.
Central Life Assurance Society
Commonwealth Life Insurance Co.
Connecticut General Life Ins. Co.
Connecticut Mutual Life Ins. Co.
Continental American Life Ins. Co.
Continental Assurance Co.
Country Life Ins. Co.
Equitable Life Ass. Society
Equitable Life Ins. Co. of Iowa
Equitable Life Ins. Co. (D. C.)
Farmers & Bankers Life Ins. Co.
Farmers & Traders Life Ins. Co.
Federal Life Ins. Co.
Fidelity Mutual Life Ins. Co.
Franklin Life Ins. Co.
General American Life Ins. Co.
Girard Life Insurance Co.
Great American Life Ins. Co.
Great Southern Life Ins. Co.
Great-West Life Assurance Co.
Guarantee Mutual Life Co.
Guardian Life Ins. Co.
Home Life Ins. Co. (N. Y.)
Home Life Ins. Co. of America
Illinois Bankers Life Assurance Co.
Indianapolis Life Insurance Co.
Jefferson Standard Life Ins. Co.
John Hancock Mutual Life Ins. Co.
Kansas City Life Ins. Co.
Lafayette Life Ins. Co.
Liberty Life Ins. Co.
Life & Casualty Ins. Co. of Tenn.
Life Ins. Co. of Virginia
Lincoln National Life Ins. Co.
Manhattan Life Ins. Co.
Massachusetts Mutual Life Ins. Co.
Metropolitan Life Ins. Co.
Midland Mutual Life Ins. Co.
Midland National Life Ins. Co.
Minnesota Mutual Life Ins. Co.
Mutual Life Ins. Co. of N. Y.
Mutual Savings Life Ins. Co.
National Life Ins. Co.
National Life & Acc. Ins. Co.
New England Mutual Life Ins. Co.
New York Life Ins. Co.
North American Life Ins. Co. (Ill.)
Northern Life Ins. Co.
N. W. Mutual Life Ins. Co.
N. W. National Life Ins. Co.
Occidental Life Ins. Co.
Ohio State Life Ins. Co.
Pacific Mutual Life Ins. Co.
Pan-American Life Ins. Co.
Penn Mutual Life Ins. Co.
Peoples Life Ins. Co. (Indiana)
Philadelphia Life Ins. Co.
Phoenix Mutual Life Ins. Co.
Protective Life Ins. Co.
Provident Life & Acc. Ins. Co.
Provident Mutual Life Ins. Co.
Prudential Ins. Co. of America
Puritan Life Ins. Co.
Reliance Life Ins. Co.
Republic National Life Ins. Co.
Reserve Loan Life Ins. Co.

Rockford Life Ins. Co.
Security Mutual Life Ins. Co.
Shenandoah Life Ins. Co.
Southland Life Ins. Co.
Standard Insurance Co.
State Life Ins. Co.
State Mutual Life Assur. Co.
Sun Life Assur. Co. of Canada
Texas Life Ins. Co.
Travelers Ins. Co.
Union National Life Ins. Co.
United Benefit Life Ins. Co.
United Life & Acc. Ins. Co.
U. S. Life Ins. Co.
Volunteer State Life Ins. Co.
West-Coast Life Ins. Co.
Western Life Ins. Co.
Western & Southern Life Ins. Co.